

A JOINT STATEMENT ENDS LIBEL ACTION BY WESTMORELAND

MUTUAL RESPECT IS CITED

CBS Stands By Documentary but General Claims Victory — No Retraction Given

By M. A. FARBER

Gen. William C. Westmoreland and CBS ended their libel suit yesterday with a joint statement that expressed the network's respect for the general's "long and faithful service to his country" and the general's esteem for CBS's "distinguished journalistic tradition."

In the two-page statement, the network said it "never intended to assert and does not believe, that General Westmoreland was unpatriotic or disloyal in performing his duties as he saw them" as commander of United States forces in Vietnam from 1964 to 1968.

In its own, separate statement, CBS said it stood by the fairness and accuracy of the 1982 documentary that prompted the general's \$120 million libel action.

CBS officials said the program had not accused the plaintiff of being disloyal or unpatriotic. Rather, it said, the broadcast presented "charges that General Westmoreland and his command misled the public, the Congress and the President about enemy troop strength to advance the political argument that the war was being won."

General Claims Victory

The general immediately claimed victory in the three-year old legal battle over the CBS Reports documentary that accused his command of engaging in a "conspiracy" to understate enemy capabilities in 1967.

"I got all I wanted," he declared at a news conference, saying the statement amounted to an "apology" by CBS. The 70-year-old retired general said he had brought the suit "to defend my honor" and could now go home to South Carolina and "try to fade away."

Minutes later, at their own news conference, CBS officials said they stood by the documentary and denied that the statement constituted an apology.

No Monetary Award

"Our purpose here," said Van Gordon Sauter, the executive vice president of the CBS broadcast group, "is not to calibrate who won and who lost."

What was important, he said, was that General Westmoreland had dropped his libel action "without any monetary award or retraction" and that CBS retains complete faith in the broadcast. "I personally do not view that statement as an apology," Mr. Sauter said.

Mr. Sauter said the documentary — "The Uncounted Enemy: A Vietnam Deception" — had been "subjected to perhaps the most intensive scrutiny ever brought to bear on a journalistic effort" and had been "vindicated." He described the libel suit as the most serious of its kind in the history of television.

The suit brought by General Westmoreland attracted national attention by raising questions about the ethics and practices of television journalism, by casting doubt on the integrity and credibility of military intelligence in wartime, and by challenging the First Amendment rights of the press.

The one-sentence legal accord that signaled a conclusion to the suit after 18 weeks of testimony in Federal District Court in Manhattan was announced late Sunday. It was filed yesterday with Judge Pierre N. Leval, who is expected to ratify it this morning and dismiss the jury.

In an interview yesterday, Richard Benveniste, the foreman of the jury, said he was "still stunned" by the settlement. "We went so long to come to an end like this. I'd have liked to have gone the whole route."

Jurors Told Not to Discuss Case

Mr. Benveniste, a 34-year-old commercial casualty underwriter, said, "A lot of people will think we spent five months for nothing. But I don't look at it that way. The two sides decided what was best, and our decisions at this moment are really insignificant."

Mr. Benveniste declined to discuss his opinions of the case, noting that Judge Leval's office had called the jurors and told them to withhold comment until tomorrow.

But one juror, who asked not to be identified, said his "gut opinion" — formed on the basis of "little comments I heard around the jury room" — was that the jury was "leaning toward CBS more than 50 percent."

"Not everyone in there was sold on either side," he said. "It would have been a long deliberation. We would have had to really dig into it."

The juror's remarks indicated that, in a case where the outlines of much of the testimony had been known for months if not years, the aplomb of the lawyers and the manner of their witnesses — the "chemistry" in the courtroom — were important determinants of jury reaction.

David Boies, the chief lawyer for CBS, "was an excellent lawyer," the juror said. "You could see the difference between him and the plaintiff's side. He had more professionalism, more experience. That might have had an effect on some of the jurors. Boies's charm was a selling point."

But the juror said that several of the witnesses for General Westmoreland — including former Lieut. Gen. Daniel O. Graham and George A. Carver Jr., the former chief of Vietnamese affairs for the Central Intelligence Agency — were "no cocky."

In this regard, he particularly singled out Robert W. Komer, the former chief of the pacification program in Vietnam, whom both Dan M. Burt, General Westmoreland's principal lawyer, and Mr. Boies had considered one of the strongest witnesses for General Westmoreland.

Particularly impressive, the juror said, was Robert S. McNamara, the former Secretary of Defense, who testified for General Westmoreland. "McNamara stopped us in our seats," the juror said.

The juror said that Maj. Gen. Joseph A. McChristian and Col. Gains Hawkins, both of whom were key witnesses for CBS in recent weeks, were "maybe more convincingly believable" than many others who took the stand.

In their joint statement, CBS and General Westmoreland said they each believed their positions "have been effectively placed before the public for its consideration and that continuing the legal process at this stage would serve no further purpose."

Historians, they said, "will long consider this and other matters related to the war in Vietnam. Both parties trust their actions have broadened the public record."

The documentary charged that, for political and public relations reasons, General Westmoreland's command had deliberately distorted the true size and nature of the North Vietnamese and Vietcong forces in South Vietnam in the months before the Tet offensive of January 1968. As a result of this "conscious effort," it said, President Johnson and American troops, as well as the public, were left "totally unprepared" for the offensive.

The broadcast specifically accused General Westmoreland of imposing an "arbitrary ceiling" of 300,000 troops on reports of enemy strength, and said his senior aides had "systematically blocked" reports by junior officers of a substantially greater North Vietnamese infiltration than was made known.

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General Westmoreland denied that he had acted improperly, and claimed that the program libeled him by saying he had deceived the President and the Joint Chiefs of Staff.

The defendants, in addition to CBS, were George Crile, the producer of the documentary; Mike Wallace, its narrator; and Samuel A. Adams, a former C.I.A. analyst who served as a paid consultant for the program.

"This experience," Mr. Sauter said at the Dorset Hotel, "has further strengthened the CBS News commitment to vigorous, fair and impartial journalism. It is a fundamental principle of CBS that the journalistic process not be limited or intimidated by those seeking to constrain free inquiry and debate and the dissemination of information."

Mr. Sauter said the network regretted that General Westmoreland "and his supporters felt compelled to bring this suit. We feel now, as we did three years ago, that this issue should never have been brought to court."

In reply to questions, Mr. Sauter said CBS felt "no chilling effect" from the suit and that the public had "an unnecessary apprehension of the media."

At General Westmoreland's news conference at the Harley Hotel, the general, and Mr. Burt, three times read aloud the passage of the joint statement about the general's loyalty.

"If that statement had been made after the CBS program was aired," the general said, "it would have satisfied me." Indeed, he said, had that statement been issued at any time since the broadcast on January 23, 1962, "it would have ended the episode."

Mr. Burt — whose conservative Capital Legal Foundation has financed the suit at a cost of more than \$3 million — said that General Westmoreland brought the action only "to clear his name and that, in my heart, is what I believe has been done."

"Many said the dispute didn't belong in court," Mr. Burt added. "But there was no alternative. And now this case has ended, as it began, in an unexpected fashion."

Mr. Burt said that he had had settlement talks with CBS lawyers ever since the suit was filed in September 1962. Some of the talks — such as those that began last week — were initiated by him, he said; others, by lawyers for the network. But only now, he said, was CBS prepared to join in a statement affirming the patriotism of his client.

"All I can tell you," he said, "is that what I never could get, I got. It was the equivalent of an apology. That's how I see it; others may see it differently."

"They signed it," Mr. Burt said, referring to CBS, "and nobody was holding a gun to their head."

Before the negotiations last week, the only confirmed efforts to settle the dispute between CBS and General Westmoreland occurred in 1962, nearly a half-year after the 90-minute broadcast.

In July 1962, soon after a CBS internal investigation of the documentary, Mr. Sauter, then president of CBS News, proposed a 45-minute follow-up program, with another 15 minutes of free air time in which the general could state his views and grievances.

General Westmoreland, however, demanded an apology; a "full retraction" on the air "of not less than 45 minutes in duration" and meeting his approval; and "compensatory payment." The general also sought access to the CBS internal investigation, conducted by Burton Benjamin, a senior producer.

The talks collapsed, and four days later General Westmoreland filed suit.

Yesterday, Mr. Burt denied that his recent overtures to CBS were based on the continued high costs of the litigation, pressures from financial backers, a loss of confidence by General Westmoreland or a belief that he was losing the case.

"We felt just as good as in the beginning and all along," he said. "We felt our cross-examinations were going nicely. But you have to keep an eye on what you came for. Many civil suits are settled out of court."

General Westmoreland said he had "not lost faith" in Mr. Burt over the course of the trial, which was scheduled to go the jury next week. He said he had told Mr. Burt that he was ready at any time to "come to an agreement that would settle the issues."

At the CBS news conference, Mr. Boies insisted that until last week Mr.

Burt had demanded "money or an apology or both" and that was what had blocked a settlement.

"When a plaintiff wants to drop a lawsuit without any money or apology," he said with a smile, "I think you ought to let him."

Just as Mr. Burt had declined to speculate on CBS's willingness to settle at this time, Mr. Boies refused to speak for Mr. Burt. "You'll have to ask him," he said.

Mr. Boies refused to accept a characterization of the accord as a "total victory" for CBS. "I'll let it speak for itself," he said.

Mr. Boies said that CBS had never questioned General Westmoreland's good motives for the actions portrayed on the broadcast.

"That's something I've been saying for a long time, and it is undoubtedly true," he said.